

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**Hearing Date and Time: 10/08/2024 at 10:00 a.m.
Objection Deadline: 10/01/2024**

In re:

Dale D. Goldschlag,

Debtor.

**Chapter 11
Case No.: 24-10297-pb
Honorable Philip Bentley**

NOTICE OF MOTION FOR ORDER TERMINATING AUTOMATIC STAY

PLEASE TAKE NOTICE that a hearing shall be held on October 8, 2024, at 10:00 a.m. on the motion filed by U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2019-2 (the “Movant”), seeking entry of an order pursuant to 11 U.S.C. § 362(d)(1) (the “Motion”) [ECF No. ____] (i) terminating the automatic stay as to Movant’s interest in the real property commonly known as 321 East Main Street, Unit 3, Smithtown, New York 11787-2820 (the “Property”); (ii) precluding any future filing from affecting the Movant’s interest in the Property; and (iii) granting Movant such other relief as the Court may deem proper. The hearing shall be held before the Honorable Philip Bentley, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004-1408, Courtroom 601.

PLEASE TAKE FURTHER NOTICE that Judge Philip Bentley conducts hearings telephonically and by videoconference. All participants must register with eCourt Appearances in advance of all telephonic and by videoconference appearances. eCourt Appearances registration is required by both attorneys and non-attorney participants. Attorneys with a CM/ECF account may find the program under the “Utilities” menu after logging in to CM/ECF. Those without CM/ECF accounts may access the program on the website at <https://ecf.nyeb.uscourts.gov/cgi-bin/nyebAppearances.pl>. Once registered, eCourt Appearances will email the telephone number and/or video link for your hearing. You may register for hearings weeks in advance, but the telephone number and/or video link will not be emailed to you until 48 hours before the hearing date. Those registering with eCourt Appearances for hearings in less than 48 hours should allow up to 15 minutes after registration to receive the email with the telephone number and/or video link. Those unable to access eCourt Appearances must email Judge Philip

Bentley/s Courtroom Deputy at pb.chambers@nysb.uscourts.gov at least two business days prior to the hearing. Your email must include your name, the case number(s), who you represent (if you are an attorney), hearing date, and phone number.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Motion must be in writing and filed electronically in accordance with General Order 559 (General Order 559 and the User's Manual for the Electronic Filing Case System can be found at <http://www.nyeb.uscourts.gov>, the official website for the Court), by registered users of the Court's case filing system, and by all other parties in interest, on a diskette, CD or DVD in Portable Document Format (.pdf), Word Perfect, or any other Windows-based word processing format, and served upon Movant's counsel at 3550 Engineering Drive, Suite 260, Peachtree Corners, GA 30092, with a courtesy copy provided to the Chambers of the Honorable Philip Bentley, so as to be received no later than **seven days** prior to the hearing date of the Motion.

PLEASE TAKE FURTHER NOTICE that the hearing on the Motion may be adjourned from time to time as set forth in open Court, and without further notice.

This 29th day of August, 2024.

McMichael Taylor Gray, LLC

By: /s/ Andrew Kamensky
Andrew Kamensky, Esq.
NY Bar No. 4963757
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: 404-474-7149
E-mail: akamensky@mtglaw.com
MTG File No.: 24-000578-04
*Counsel for U.S. Bank National Association,
as Trustee for Velocity Commercial Capital
Loan Trust 2019-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice was served via U.S. First Class Mail and/or CM/ECF electronic service upon counsel for the Debtor and all parties in interest who have filed a notice of appearance, and as noted below.

Via U.S. Mail

Dale D. Goldschlag
240 Riverside Blvd.
Apt. 17B
New York, NY 10069

Dale D. Goldschlag
321 East Main Street, Unit 3
Smithtown, New York 11787-2820

Via U.S. Mail and CM/ECF electronic service

James B. Glucksman, Esq.
Jack Molino, Esq.
Davidoff Hutcher & Citron LLP
605 Third Avenue
New York, NY 10158

United States Trustee
Office of the United States Trustee - NY
Alexander Hamilton Custom House
One Bowling Green, Room 534
New York, NY 10004-1408

This 29th day of August, 2024

/s/ Andrew Kamensky
McMICHAEL TAYLOR GRAY, LLC
3555 Engineering Drive, Suite 260
Peachtree Corners, GA 30092

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Dale D. Goldschlag,

Debtor.

**MOTION FOR TERMINATION
OF AUTOMATIC STAY**

Chapter 11
Case No.: 24-10297-pb
Honorable Philip Bentley

**MOTION FOR ORDER PURSUANT TO SECTION 362(d) OF
THE BANKRUPTCY CODE GRANTING RELIEF FROM AUTOMATIC STAY**

Andrew Kamensky, Esq., an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. Bankruptcy Court for the Southern District of New York, hereby affirms the following to be true under penalty of perjury:

U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2019-2 (the “Movant”), through undersigned counsel, and pursuant to 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure, seeks relief from the automatic stay imposed by 11 U.S.C. § 362(a), and permission to exercise all its rights and remedies with respect to its security interest in the real property commonly known as 321 East Main Street, Unit 3, Smithtown, New York 11787-2820 (the “Property”), and respectfully states as follows:

PARTIES AND FACTUAL BACKGROUND

1. Dale D. Goldschlag (the “Debtor”) does not own the Property and he is not a borrower or mortgagor under the loan documents.
2. On May 30, 2019, Debtor, solely in his capacity as Managing Member of 321 East Main Street Realty LLC (the “Corporate Borrower”), executed and delivered a commercial promissory note (the “Note”) borrowing \$600,000.00 from MP5454 Funding LLC (“Lender”), a

New York Limited Liability Company, to memorialize the terms of the debt. A true and accurate copy of the Note is attached hereto as part of **Exhibit “A”**.

3. As security for repayment of the Note, Debtor, solely in his capacity as Managing Manager of the Corporate Borrower, executed and delivered a commercial mortgage (the “Mortgage”) to Lender, which was recorded with the Suffolk County Clerk on July 5, 2019, as Book M00023039 at Page 670. The Mortgage, a true and accurate copy of which is as part of **Exhibit “A”**, encumbers the Property as a first lien position mortgage.

4. Via mortgage assignments included as part of **Exhibit “A”**, the Mortgage was transferred to Movant, and Movant is entitled to enforce the Note and Mortgage.

5. On or about February 1, 2024, the Corporate Borrower defaulted on the Note and Mortgage. Pursuant to Movant’s proof of claim no. 22-1, the prepetition amount due to Movant on the Note and Mortgage is \$581,622.22. *See* Claims Register, Claim No. 22-1.

6. On February 23, 2024, Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.

7. Movant has not received any post-petition mortgage payments, and the Note is delinquent for six months (March 2024 – August 2024) in the estimated amount of \$44,992.44 (6 months x \$7,498.74).

8. Interest on the unpaid principal balance continues to accrue, and to protect its security on the Property, Movant may be required to make advances for property taxes, insurance, and related matters or risk irreparable harm to its security interest as a result of the default.

9. By reason of the foregoing, Movant, its servicing agent, nominees, successors and/or assigns should be permitted to take all necessary action to adequately protect its security interest in the Property.

MOVANT IS ENTITLED TO STAY RELIEF

10. Pursuant to 11 U.S.C. § 362(d)(1) a Court may terminate, amend or modify the automatic stay for cause including the lack of adequate protection of an interest in the property of the Debtor. Cause exists because the Debtor has not and cannot offer Movant adequate protection of its interest in the Property, and Movant avers it is not adequately protected.

11. The Corporate Borrower and Debtor are not making payments on the Note and Mortgage as required. Failure to make regular mortgage payments as they become due constitutes “cause” to lift the automatic stay. *See In re Taylor*, 151 B.R. 646 (E.D.N.Y. 1993).

12. Moreover, Debtor is not the obligor on the Note, nor the owner of the Property, nor the obligated party to the Mortgage. Thus, the Property is not necessary for an effective reorganization, *because the Debtor does not own the Property*. As such, Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2)(B).

13. Movant requests waiver of the fourteen (14) day stay pursuant to Bankruptcy Rule 4001(a)(3).

14. No previous application has been made for the relief requested herein.

RESERVATION OF RIGHTS

15. Movant expressly reserves all rights, claims, arguments, defenses, and remedies with respect to this Motion, or any other issue in this case, and to supplement, modify, and amend this Motion, and to raise additional arguments in writing or orally at the hearing on the Motion.

WHEREFORE, Movant requests that this Court enter an Order (i) granting Movant, its servicing agent, nominees, successors and/or assigns relief from the automatic stay pursuant to 11 U.S.C. § 362(d), together with its attorneys’ fees and costs; (ii) waiving the fourteen-day stay

created by Bankruptcy Rule 4001(a)(3); and (iii) granting Movant such other, further and different relief as the Court may deem just and proper.

This 29th day of August, 2024.

McMichael Taylor Gray, LLC

By: /s/ Andrew Kamensky
Andrew Kamensky
NY Bar No. 4963757
Attorney for Creditor
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: 404-474-7149
E-mail: akamensky@mtglaw.com
MTG File No.: 24-000578-04
*Counsel for U.S. Bank National Association,
as Trustee for Velocity Commercial Capital
Loan Trust 2019-2*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief from Automatic Stay, was served via U.S. First Class Mail and CM/ECF electronic service upon counsel for the Debtor and all parties in interest who have filed a notice of appearance, and as noted below.

Via U.S. Mail

Dale D. Goldschlag
240 Riverside Blvd.
Apt. 17B
New York, NY 10069

Dale D. Goldschlag
321 East Main Street, Unit 3
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James B. Glucksman, Esq.
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United States Trustee
Office of the United States Trustee - NY
Alexander Hamilton Custom House
One Bowling Green, Room 534
New York, NY 10004-1408

This 29th day of August, 2024

/s/ Andrew Kamensky
McMICHAEL TAYLOR GRAY, LLC
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Peachtree Corners, GA 30092